

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: Squad #4	CCRB Case #: 201801169	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/28/2018 1:30 AM	Location of Incident: East 168th Street and Franklin Avenue	Precinct: 42	18 Mo. SOL 7/28/2019	EO SOL 7/28/2019	
Date/Time CV Reported Sat, 02/10/2018 2:23 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 02/10/2018 2:23 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Elvis Rodriguez	21369	942453	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Danny Romero	06431	957101	042 PCT
2. POF Ashley Fonseca	26007	963992	042 PCT
3. POM Harold Borden	25960	963877	042 PCT
4. POM Kenneth Marello	12549	960870	042 PCT
5. POM Akil Stewart	16032	961330	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Elvis Rodriguez	Abuse: Police Officer Elvis Rodriguez threatened § 87(2)(b) with the use of force.	
B.POM Elvis Rodriguez	Discourtesy: Police Officer Elvis Rodriguez spoke discourteously to § 87(2)(b)	
C.POM Elvis Rodriguez	Abuse: Police Officer Elvis Rodriguez seized § 87(2)(b)'s property.	
D.POM Elvis Rodriguez	Abuse: Police Officer Elvis Rodriguez searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On February 10, 2018, § 87(2)(b) filed this complaint with the CCRB online.

On January 28, 2018, at approximately 1:30 a.m., at the intersection of East 168 Street and Franklin Avenue in the Bronx, PO Elvis Rodriguez of the 42 Precinct pointed his Taser at § 87(2)(b) (**Allegation A: Abuse of Authority, § 87(2)(g)**). PO Rodriguez told § 87(2)(b) to, “Get out of the fucking car, idiot,” and “Get the fuck out the car, idiot” (**Allegation B: Discourtesy, § 87(2)(g)**). PO Rodriguez told § 87(2)(b) that he would Taser him if he did not get out of the car and pushed his Taser into § 87(2)(b)’s back (subsumed under **Allegation A**). PO Rodriguez told § 87(2)(b) “I want to take your fucking car” (subsumed under **Allegation B**), and authorized the transportation of § 87(2)(b)’s car to the 42 Precinct stationhouse (**Allegation C: Abuse of Authority, § 87(2)(g)**). PO Rodriguez searched § 87(2)(b)’s car before it was transported (**Allegation D: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was arrested for § 87(2)(b) as a result of this incident (BR 01). He was also issued four summonses for tinted windows and for disobeying a traffic device (BRs 02, 03, 04, 05).

Video from 1229 Franklin Avenue was expunged before the investigation was able to obtain it (BR 06). There is no other video of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Elvis Rodriguez threatened § 87(2)(b) with the use of force.

Allegation (B) Discourtesy: Police Officer Elvis Rodriguez spoke discourteously to § 87(2)(b)

It is undisputed that § 87(2)(b) ran a red light at the intersection of East 168 Street and Franklin Avenue in the Bronx and that he was subsequently arrested for § 87(2)(b). § 87(2)(g)

§ 87(2)(b) (BR 07) said that he knew that officers were pulling him over for running the red light, so he rolled down his windows, retrieved his license from his front jacket pocket and registration from the center console, and put his hands by the steering wheel. PO Rodriguez approached § 87(2)(b) and asked for his license and registration and why he had been moving inside the vehicle. § 87(2)(b) gave PO Rodriguez his license and registration and told him that he had only moved to get his license and registration. PO Rodriguez took the license and registration and returned to his car. § 87(2)(b) stayed inside of his car and used his cell phone, keeping both of his hands in front of his face by the steering wheel. Aside from using his phone, § 87(2)(b) did not make any movements.

After approximately five minutes, PO Rodriguez walked back to § 87(2)(b)’s car and stood next to the rear view mirror by the front driver’s side door. PO Rodriguez removed his Taser from its holster, extended his arm straight forward, pointed the Taser at § 87(2)(b)’s head, and said, “Get out of the fucking car, idiot.” § 87(2)(b) later reported PO Rodriguez’s phrasing as, “Get the fuck out the car, idiot.” § 87(2)(b) asked PO Rodriguez what had happened. PO Rodriguez told § 87(2)(b) again to get out of the car and that his license had been suspended. § 87(2)(b) got out of the car. PO Rodriguez, who was still pointing the Taser at § 87(2)(b) told him to put his hands behind his back, which he did immediately.

Another officer, identified by the investigation as PO Danny Romero, also of the 42 Precinct, placed § 87(2)(b) into handcuffs. PO Rodriguez then pushed the Taser into § 87(2)(b).

§ 87(2)(b) s left side underneath his ribcage by the kidney and told § 87(2)(b) not to move. PO Romero patted down § 87(2)(b) and searched his pockets. As he did so, PO Rodriguez kept his Taser pushed into § 87(2)(b) s side.

After approximately three to five minutes, four to five additional officers responded to the location, and PO Rodriguez removed the Taser from § 87(2)(b) s side. § 87(2)(b) asked PO Rodriguez if his car could be left at the location in a legal parking spot. PO Rodriguez told § 87(2)(b) “No. I want to take your fucking car.”

PO Rodriguez (BR 08) said he approached § 87(2)(b) s vehicle with caution because § 87(2)(b) s car had tinted windows and because § 87(2)(b) had run a red light in front of a clearly marked police car. PO Rodriguez went to the front driver’s side door, and § 87(2)(b) lowered his window. As the window was going down, PO Rodriguez saw § 87(2)(b) reach to his right hip with his right and left hands. PO Rodriguez thought that § 87(2)(b) was reaching for a gun, so he told § 87(2)(b) to put his hands on the steering wheel. § 87(2)(b) put his hands on the steering wheel and told PO Rodriguez, “I’m removing my fucking license.” Once PO Rodriguez saw § 87(2)(b) s hands on the steering wheel, he instructed § 87(2)(b) to give him his license, and § 87(2)(b) complied. Aside from the initial movement that § 87(2)(b) made to his right hip, there was nothing that made PO Rodriguez suspect that § 87(2)(b) had a weapon.

PO Rodriguez returned to his car, ran § 87(2)(b) s information, and, having learned that § 87(2)(b) s license was suspended, determined that § 87(2)(b) was under arrest for § 87(2)(b). PO Rodriguez approached § 87(2)(b) told him that he was under arrest for § 87(2)(b), and ordered him to step out of his car. PO Rodriguez was cautious when approaching § 87(2)(b) because § 87(2)(b) had used profanity during their prior interaction, but he no longer suspected that § 87(2)(b) had a weapon.

§ 87(2)(b) who was speaking loudly, asked PO Rodriguez what his charges were, why he was being arrested, and told PO Rodriguez that he was not going to take him § 87(2)(b) anywhere while shaking his head “no.” § 87(2)(b) s hands were on the steering wheel, and he was not otherwise moving his body. PO Rodriguez asked § 87(2)(b) again to get out of the car, but § 87(2)(b) did not comply.

PO Rodriguez decided that § 87(2)(b) was “passively resisting” because he refused to get out of the car, shook his head no, and told PO Rodriguez that he was not going to take him anywhere. Because of this, PO Rodriguez decided to issue an “Arc Warning” with his Taser in order to gain § 87(2)(b) s voluntary compliance. PO Rodriguez chose this option because it seemed to him like the most efficient way to get § 87(2)(b) to comply with his order to get out of the car.

PO Rodriguez told § 87(2)(b) “I am going to Taser you if you do not comply.” He then took his Taser out of its holster, removed the cartridge, pointed the Taser up towards the sky, and pulled the trigger. Because there was no cartridge in the Taser, an arc of electricity lasting approximately five seconds appeared between the two prongs. After PO Rodriguez issued warning, § 87(2)(b) unlocked the car door and opened it a few inches. As he did so, PO Rodriguez put the cartridge back into the Taser. He put the Taser back into its holster with his right hand while he simultaneously opened the car door with his left.

§ 87(2)(b) walked to the back of the car and put his hands behind his back. An officer – PO Rodriguez or another officer present at the scene – placed § 87(2)(b) into handcuffs and patted him down.

PO Rodriguez denied pushing his Taser into § 87(2)(b)'s side. He also denied saying, "Get out of the fucking car, idiot," "Get the fuck out the car, idiot," or, "I want to take your fucking car."

PO Romero's (BR 09) statement was generally consistent with that of PO Rodriguez. From where he was standing, PO Romero could not see or hear either PO Rodriguez or § 87(2)(b) during their initial interaction. After PO Rodriguez saw that § 87(2)(b)'s license was suspended, PO Rodriguez approached the front driver's side door, and PO Romero stood behind him by the back driver's side door. Over the course of two to three minutes, PO Rodriguez asked § 87(2)(b) to get out of his car approximately two to three times, which he did not do. PO Rodriguez then removed his Taser from the holster, pointed it towards the ground, removed the cartridge, and pulled the trigger. Sparks appeared between the prongs of the Taser for approximately five seconds. PO Rodriguez never pointed the Taser at § 87(2)(b). PO Rodriguez did not holster the Taser until § 87(2)(b) was handcuffed. PO Romero did not hear PO Rodriguez ever say, "Get out of the fucking car, idiot," "Get the fuck out the car, idiot," or, "I want to take your fucking car."

PO Borden (BR 10) and PO Fonseca (BR 11) had little recollection of the incident. They denied hearing PO Rodriguez say "Get out of the fucking car, idiot," "Get the fuck out the car, idiot," or, "I want to take your fucking car." Neither PO Borden nor PO Fonseca recalled seeing any officer use a Taser during the encounter.

Patrol Guide procedure 221-08 (BR 13) states that a CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present.

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Elvis Rodriguez seized § 87(2)(b)'s property.

Allegation (D) Abuse of Authority: Police Officer Elvis Rodriguez searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b)'s car was transported to the 42 Precinct stationhouse. § 87(2)(b) (BR 07) did not witness his car being searched but suspected that it was because it had been taken to the 42 Precinct stationhouse. § 87(2)(b) did not know who transported his car. § 87(2)(b)'s cousin later came to the 42 Precinct stationhouse and took possession of § 87(2)(b)'s car.

PO Rodriguez (BR 08) did not remember who ultimately drove the car to the stationhouse. Before officers – PO Rodriguez was not sure who – transported § 87(2)(b) to the 42 Precinct stationhouse, PO Rodriguez sat in the front seat of § 87(2)(b)'s car and searched the area within immediate arm's reach for any possible weapons for safety reasons. He did not

open or look inside any compartments, and he did not do an inventory search of the contents of the car. PO Rodriguez did not inventory the car at the 42 Precinct stationhouse because § 87(2)(b) s cousin picked up the car.

People v. Confessore, 821 N.Y.S.2d 769, 2006 (BR 14) states that a car can be seized when there is a reasonable basis to believe that the car itself is evidence of a crime, the car cannot be operated because it is unregistered, uninsured or uninspected, the car was involved in a fatal automobile accident, or the car was driven by an unlicensed driver or driver whose license is suspended and there is no one who is legally able to drive the car.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Rodriguez has been a member of service for 11 years and has been a subject in one CCRB complaints and one allegation, which was not substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 5, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR 17).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 4

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____

	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date